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IN THE

Supreme Court of the United States

October Term, 1996

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

REPLY OF THE STATE OF NEW YORK TO EXCEPTIONS OF THE STATE OF NEW JERSEY TO THE REPORT OF THE SPECIAL MASTER

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**REPLY OF THE STATE OF NEW YORK TO
EXCEPTIONS OF THE STATE OF NEW JERSEY
TO THE REPORT OF THE SPECIAL MASTER**

STATEMENT OF THE CASE

The statement of the case of the State of New York appears at pages 2 through 9 of its Exceptions to the Report of the Special Master.

SUMMARY OF ARGUMENT

Under the 1834 Compact, New York's sovereignty over Ellis Island is not limited to the high water mark of the Island as it existed at the time of the Compact. During the unsuccessful 1827 negotiations between the states, New Jersey conceded that

New York already possessed exclusive jurisdiction over the Island to the low water mark. Nothing indicates that, with the Compact, New York relinquished to New Jersey its jurisdiction between high and low water. The Compact's grant to New Jersey of an exclusive right of property in the "land under water" surrounding Ellis Island does not change this conclusion, for at the time of the Compact "land under water" extended to but not above the low water mark. The Court has noted, moreover, the obvious impracticality of establishing a sovereign boundary at the high water mark, and recognizes the common-law principle that a country bounded by tidal waters extends to the low water mark. Although the Compact does not expressly limit New Jersey's exclusive right of property over underwater land to the low water mark, while it does explicitly award New York jurisdiction over subaqueous land "to the low water-mark" on the New Jersey side of New York Bay, this does not mean that New Jersey's property right extends to the high water mark of New York's sovereign territory. Rather, the Compact is silent about low or high water when establishing such a boundary is irrelevant. It was irrelevant with respect to Ellis Island because the states recognized in 1834 that New York could and would expand Ellis Island beyond its low water mark at the time by means of landfill.

The Special Master correctly concluded that the pier in existence on Ellis Island in 1834 was built on landfill. New York presented convincing evidence that, given the depth to which piles would have to be driven to support this pier, the state of the art of pile-driving in New York Harbor in the early 1800s, the likely use of the pier to support transportation of heavy building materials and ordnance to the fort on the Island, and the ease of using landfill in the shallow water adjoining Ellis Island, the pier was built on fill.

The Special Master's division of sovereignty over Ellis Island between New York and New Jersey was an erroneous and impractical idea. The entire Island has been and should remain subject to New York's exclusive sovereignty. But if Ellis Island must be divided between the states according to its "original" and filled portions, it should be divided as the Special Master proposes, in order to guarantee that authority over individual buildings is not shared and that New York's portion of the Island is not landlocked.

ARGUMENT

POINT I

NEW YORK'S SOVEREIGNTY OVER ELLIS ISLAND IS NOT LIMITED TO THE MEAN HIGH WATER LINE OF THE ISLAND AS IT EXISTED IN 1834, BUT INSTEAD EXTENDS TO THE ENTIRETY OF THE ISLAND AS IT EXISTS TODAY

Under the 1834 Compact, New York's sovereignty is not limited, as New Jersey mistakenly suggests (Br, pp 28-38), to the mean high water line of Ellis Island as it existed at the time of the Compact. Article Second of the Compact is silent on this subject, awarding Ellis Island to New York without limitation. But the history of Compact negotiations and the law as declared by both this Court and New Jersey's own highest court shows that, as of 1834, New York was sovereign over all of Ellis Island to its mean low water mark. Indeed, an examination of the very provisions of the Compact relied on by New Jersey further demonstrates the correctness of New York's position that the Compact awards to New York all of the Island as it exists today.

The Special Master, in concluding that the boundary on the Island should be drawn at the low water mark, first examined the history of the negotiations of the Compact (R 153-154).¹ As he noted, the First Proposition made by New Jersey during the course of the unsuccessful 1827 negotiations included the proposal "[t]hat the islands called Bedlow's Island, Ellis' Island, Oyster Island, and Robins' Reef, to low water mark of the same, be held to be and remain within the exclusive jurisdiction of the State of New York" (NJ 274). The Special Master observes that the "low water mark" language "was not contained in Article Second of the Compact," but that "nothing in the pre-Compact negotiations contradicted such a construction" (R 153). While the Special Master is correct, he misses a more significant aspect of the proposal, which is that it employs, uniquely in the context of Compact negotiations, the term "remain," indicating that the islands mentioned in New Jersey's Proposition were by 1827 in New York's possession to their low water marks. Thus, New Jersey is simply incorrect in arguing (Br, p 34) that "[b]efore the Compact was adopted, New Jersey did not agree that New York's 'present jurisdiction' extended to low water." It conceded as much in 1827, and there is no reason to imagine that, in the Compact the states eventually produced, New York relinquished its sovereignty over Ellis Island between (and only between) low and high water.

New Jersey urges the Court (Br, pp 32-34) instead to consult its 1829 Complaint in this Court. But the Complaint can also be read to support New York's position. In that pleading, New

¹Parenthetical citations preceded by "R" are to the Final Report of the Special Master. Parenthetical citations preceded by "T" are to the trial transcript. Parenthetical citations preceded by "NY" are to the numbered exhibits submitted by the State of New York, and those preceded by "NJ" are to the numbered exhibits submitted by the State of New Jersey.

Jersey contended that, while New York had enjoyed "long continued possession" of the islands in New York Bay, that possession "ha[d] been uniformly confined in its exercise to the fast land thereof," such that "the title of New Jersey to the whole waters of the Staten Island sound remains clear and absolute" (NJ 293, p 23). New Jersey's argument is based on the suggestion that "fast land" is used in the Complaint as a term of art meaning territory above the high water mark. While it can certainly have this meaning, *see, e.g., United States v. Willow River Power Co.*, 324 U.S. 499, 509 (1945), "fast land" can also be used more informally to contrast with the "submerged lands" covered by water at low tide, *see, e.g., Scranton v. Wheeler*, 179 U.S. 141, 163 (1900); *Hill v. United States*, 149 U.S. 593, 595 n. 1 (1893). New Jersey's contrast of "fast land" with "the whole waters" of the Bay makes it likely that the term was used in this latter sense in the 1829 Complaint, especially in view of New Jersey's 1827 concession that New York had jurisdiction over the islands in the Bay to low water.

The prevailing law at and after the time of the Compact likewise makes clear that the Compact's award of Ellis Island to New York encompassed the Island to its low water mark. New Jersey is simply wrong in suggesting otherwise (Br, pp 30-32).

This is not a case, as the Special Master recognized (R 152-153), that has anything to do with the many decisions holding that a sovereign's conveyance of land bounded by the sea or any navigable tidewater does not, in the absence of a clear indication to the contrary, pass any title below high water mark. *See, e.g., Shively v. Bowlby*, 152 U.S. 1, 13 (1894); *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 220 (1845); *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 410 (1842); *City of Mobile v. Hallett*, 41 U.S. (16

Pet.) 261, 265 (1842).² As this Court has explained, this holding derives from the common-law rule that the land below high water is held by the sovereign in trust for the public good. *Shively*, 152 U.S. at 16.

Indeed, although New Jersey attempts to rely on this group of cases, they undermine its argument. According to New Jersey (Br, p 31), the cases demonstrate that "[w]hen the Compact was adopted, the term 'lands under water' was understood to include all tidally-flowed lands, up to the mean high water mark." But this is simply untrue. As this Court has recognized, under the common law "the land between ordinary high and low water mark" is called the "shore." *United States v. Pacheco*, 69 U.S. (2 Wall.) 587, 590 (1864); accord, *Shively*, 152 U.S. at 12. Both this Court and New Jersey's highest court have taken pains to distinguish between "the shore" and "lands under water." *Hardin v. Jordan*, 140 U.S. 371, 381 (1891); *Bell v. Gough*, 23 N.J.L. 624 (N.J. 1852) (distinguishing "shore" and "soil under water"). "Lands under water" thus extend to, but not above, the low water mark.

The incongruity and inconvenience of permitting one sovereign to assert its sovereignty up to the high water mark of another's territory prompted creation of a straightforward common-law rule that is fatal to New Jersey's argument. In

²This is also not a case, as New Jersey suggests (Br, p 30), involving the question of whether the Court should adopt an *ad hoc* definition of "island" contained in a different Special Master's decree. See *United States v. California*, 382 U.S. 448, 449 (1966). And it has nothing to do, despite New Jersey's contention otherwise (Br, p 30), with whether Ellis Island is an "island" as that term is defined in the international Convention on the Territorial Sea and the Contiguous Zone dating from 1958. See *United States v. Alaska*, 117 S. Ct. 1888, 1900 (1997).

Handly's Lessee v. Anthony, 18 U.S. (5 Wheat.) 374, 383 (1820) (Marshall, C.J.), the Court recognized "[t]he principle that a country bounded by a river extends to low water mark, a principle so natural, and of such obvious convenience as to have been generally adopted." "This rule," the Court said,

has been established by the common consent of mankind. It is founded on common convenience. Even when a State retains its dominion over a river which constitutes the boundary between itself and another State, it would be extremely inconvenient to extend its dominion over the land on the other side, which was left bare by the receding of the water * * *. Wherever the river is a boundary between States, it is the main, the permanent river, which constitutes that boundary; and the mind will find itself embarrassed with insurmountable difficulty in attempting to draw any other line than the low water mark.

Id. at 380-81.

New Jersey contends (Br, p 38) that "*Handly's Lessee* does not support the Master's conclusion," for "under the Compact New Jersey is not bounded by the shore of the Hudson River and New York Bay, but is bounded by the middle of the Hudson River and the Bay." The obvious point of the Special Master's reliance on *Handly's Lessee*, however, is that *New York*, in its role as sovereign over Ellis Island, is bounded by New York Bay, and thus that the subaqueous territory of New Jersey (like that of Kentucky in *Handly's Lessee*) extends only to the low water mark.

Apparently, the mind of New Jersey, unlike that of Chief Justice Marshall, does not find itself embarrassed to disregard the insurmountable difficulty of making one state sovereign over the

foreshore of territory otherwise controlled by another, instead treating the obvious problems as "unsubstantiated practical concerns" (Br, pp 36-37). This is the phrase New Jersey applies to its ability, under its interpretation of the Compact, to forbid New York access to Ellis Island at low tide. Indeed, as the Special Master recognized (R 155), permitting New Jersey to do what it pleased with the shore of Ellis Island might have cut off entirely New York's sovereign territory on the Island from New York Harbor. See, e.g., *City of Hoboken v. Pennsylvania R. Co.*, 124 U.S. 656 (1887) (under New Jersey law, state legislature could grant "lands constituting the shore . . . below high-water mark" to another so as "to cut off the access of the riparian owner from his land to the water . . . without making compensation to him for such loss").

Nor is New Jersey correct in suggesting (Br, pp 34-36) that "practical construction of the Compact since 1834 supports New Jersey's interpretation." New Jersey's argument is this: New York's 1808 conveyance of title to Ellis Island to the United States was to "ordinary high water" (NY 92). In 1880, New York conveyed to the United States land "contiguous to the lands of the United States" at Ellis Island (NY 93). In 1904, however, according to New Jersey, the United States Attorney General "explicitly determined that the 1880 deed and cession of jurisdiction was of no force and effect," and obtained a deed to the same land from New Jersey (NJ 338).

This episode is irrelevant to the question of New York's dominion, under the Compact, over the shore of Ellis Island. As discussed earlier in this section, a sovereign's conveyance of title to land bounded by tidewater does not convey title below the high water mark. New York's 1808 deed to the United States, expressly following this common-law rule, was simply a careful exercise of the conveyancer's art. New York's 1880 deed purported to convey, *inter alia*, the land between high and low

water at Ellis Island. Because New York owned this land and was empowered to transfer it, the 1880 conveyance remained effective as to it. And the United States Attorney General, in 1904, did not "explicitly determin[e] that the 1880 deed and cession of jurisdiction was of no force and effect." Rather, he observed only "that the ownership of the lands under water west of the middle of the Hudson River and the Bay of New York is in the State of New Jersey" (NJ 338).³ The foreshore of Ellis Island, which was retained by New York under the 1834 Compact and was not "land under water," passed to the United States in the 1880 deed.⁴

³As discussed in New York's Brief on Exceptions (pp 30-31), both New Jersey's insistence on compensation for the United States' use of New Jersey's subaqueous land for emplacement of the landfill that became part of Ellis Island and the United States' response to that insistence are perfectly consistent with the fact that under Article Second of the Compact, landfill added to Ellis Island was subject to New York's sovereignty.

⁴Because New Jersey invites the Court to "revisit the Special Master's analysis" on the question of whether the United States' jurisdiction over Ellis Island left New York "with far too little governmental authority upon which to claim prescription" (Br, p 14 n 8), it is necessary to note that the Special Master erred in understating the extent of New York's authority over Ellis Island, and thus the scope of its prescriptive activities. Even federal jurisdiction far more complete than the United States has over Ellis Island does not preempt or exclude state laws. See, e.g., *James Stewart & Co. v. Sadrakula*, 309 U.S. 94 (1940) (New York Labor Law requiring that steel beams at construction site be "planked" remained in effect even though United States had exclusive jurisdiction over post office site); *Chicago, R.I. & P.R. Co. v. McGlinn*, 114 U.S. 542, 546 (1885) (even upon cession of exclusive jurisdiction to United States, state laws "affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, remain in effect").

Thus, even though the Compact is silent on the subject of whether Ellis Island as it existed in 1834 was retained by New York to its high water or low water mark, the history of the Compact negotiations and the law of both this Court and New Jersey's highest court establish that the "Ellis Island" of 1834 lay within New York to its low water mark. New Jersey now argues (Br, pp 30-32) that the fact that Article Third of the Compact awards New York "exclusive jurisdiction . . . of and over the lands covered by the said waters [i.e. of New York Bay and the Hudson River] to the low water-mark on the westerly or New Jersey side thereof," whereas "Article II does not state that New York's jurisdiction on Ellis Island extends to low water," means that "the States intended to strictly limit New York's jurisdiction on Ellis Island to the Island above mean high water."

No such inference is justified. First, as discussed above, a water-land boundary between sovereigns is, for obvious practical reasons, at the low water mark. The Compact's silence on this subject suggests that it simply follows this practice. Nowhere in the Compact is there a reference to the high water mark.

The explicit reference to low water in Article Third can be explained by the fact that the term was necessary to resolve a key aspect of the controversy between the two states. New Jersey's 1829 Complaint avers that New York "ha[s] lately asserted an absolute and exclusive right of property, jurisdiction and sovereignty, over all the waters of the Hudson River and Bay, and Staten-Island sound; and that quite up to high water mark on the New-Jersey shore" (NJ 293 p 23)—a claim which New York based on specific prior royal and proprietary grants (NJ 203, 205). The question of the geographical extent of New York's jurisdiction over the River and Bay west of the mid-point was, obviously, a vexed and vexing question for the Commissioners, who resolved it by addressing the matter expressly in the

Compact. By contrast, New York's sovereignty over the islands in the Bay to the low water mark was conceded by New Jersey and in keeping with general practice. There was no need to reconfirm it in the Compact.

New Jersey's approach to the Compact, far from suggesting that New York is sovereign over Ellis Island only to the high water mark, actually supports the interpretation of Article Second of the Compact offered in New York's Brief on Exceptions. The Compact mentions underwater lands at three points: Article Third's mention of New York's "exclusive jurisdiction . . . over the lands covered by" the River and Bay "to the low water-mark" on the New Jersey side; the same Article's grant to New Jersey of "the exclusive right of property in and to the land under water lying west of " the mid-point of the River and Bay; and Article Fifth's award to New York of "the exclusive right of property in and to the land under water lying between the middle of the said waters [i.e. those "between Staten Island and New Jersey"] and Staten Island." Only one of these provisions mentions either high or low water. Indeed, it is the failure to limit New Jersey's "exclusive right of property" in Article Third to low water that, as New Jersey sees it (Br, p 31), gives the state sovereign rights to the high water mark of Ellis Island.

But there is a better explanation. The limitation in Article Third of New York's exclusive jurisdiction over underwater land precisely settles an important and contested issue between the states. The failure to specify the extent of New Jersey's property rights in Article Third, as with the parallel provision addressing New York's property rights in Article Fifth, can be accounted for by its irrelevance. That this is true is particularly evident under Article Fifth. Specifying high or low water in that Article was irrelevant because the Compact undisputedly left New York sovereign over everything east of the mid-point of the waters

between New Jersey and Staten Island. There was thus no reason to specify that the "exclusive right of property" over the land under these waters—a right that, according to New Jersey and this Court, *see Central R.R. Co. v. Mayor of Jersey City*, 209 U.S. 473, 478 (1908), is in the nature of sovereignty—extends to high or low water of territory over which New York is in any event sovereign.⁵

As to New Jersey's exclusive right of property in Article Third: The Compact was silent because it intended to confine New York's sovereignty over Ellis Island and the other islands retained by New York under Article Second to *neither* low nor high water. As demonstrated at length in New York's Brief on Exceptions (pp 11-21), both states in 1834 envisioned that the islands awarded New York, like other land in New York Harbor, would be extended by fill to and beyond their original low water lines. Limiting New York's sovereignty over these islands to either low or high water would have thwarted this purpose.

The Compact's silence with respect to low and high water in Article Second means, at the very least, that New York's sovereignty over Ellis Island extends to the low water mark on the original Island. But this silence, viewed in the context of the Compact's other mentions of rights in underwater land, suggests that, as New York demonstrates elsewhere, the Compact envisions geographical expansion of Ellis Island by landfill

⁵The fact that the Compact awards New York the exclusive right of property only over the underwater land east of the mid-point between New Jersey and Staten Island indicates that New Jersey has the equivalent exclusive right west of that mid-point. But no clash between New Jersey's exclusive right of property and New York's sovereignty results because there are no islands subject to New York's sovereignty west of this mid-point.

beyond the low water mark and a coextensive expansion of New York's sovereignty.

POINT II

THE SPECIAL MASTER CORRECTLY CONCLUDED THAT THE PIER ON ELLIS ISLAND WAS BUILT ON LANDFILL

As the Special Master recognized (R 158-159), abundant evidence in the record establishes that a pier on Ellis Island that was in existence at the time of the Compact was built on artificial fill. New Jersey, seeking to seize more territory by pushing back the high-water mark on Ellis Island, now argues (Br, pp 46-48) that the Special Master's conclusion lacks any "credible evidence" to support it. In fact, however, all credible evidence supports the Special Master's conclusion.

The L-shaped pier in question is clearly depicted, angling from the southwest side of the Island, on an 1819 Map entitled "Ellis Island Fort Gibson" (R App J). The Special Master concluded that much of this pier was supported by artificial fill for two reasons: the 1819 map⁶ "shows a filled area around at least two thirds of the dock," and New York's expert, Dr. Donald F. Squires, indicated that the pier, which was used "to carry ammunition by rail car to the cannons at the Fort Gibson redoubts," needed "to be structurally sound," and thus to rest on fill, because "pile-driving techniques (as an alternative to fill) adequate to hold such weight were not in use at that time" (R 159).

⁶New York agrees with New Jersey (Br, p 47 n 20) that the Special Master's reference in this context to an "1839 chart" (R 158) must be a typographical error, and that the Special Master intended to refer to the 1819 map.

On the first of these points there is no disagreement between the parties. New Jersey's expert testified that "[t]here is land on either side of the pier" and that this was consistent with either the presence of fill around and beneath the pier or "accretion" of "sediment" in "closely placed pilings" supporting the pier "that could have trapped the material" (T 277, 282). Dr. Squires agreed: around the pier, he said, the 1819 map shows "material that was either placed or has accumulated," indicating that the pier was either "on landfill" or "supported by a . . . sufficiently dense number of spaced pilings, so that it was indeed accumulating sediment" (T 2929).

The remainder of Dr. Squires' testimony on this subject demonstrated that the pier could have been built only on landfill, not on pilings. He noted that the pier appears in both the 1819 map and earlier maps, during periods when the United States was constructing, fortifying, and supplying Fort Gibson on Ellis Island (T 3023). Construction of Fort Gibson would have required stone, which is not found naturally on Ellis Island, as well as bricks and mortar (T 3029). When the fort was completed, cannon were emplaced on the Island, and ammunition supplied for these (T 3029). Barges carrying heavy building materials or ordnance could not conveniently have landed elsewhere on the Island, for the depth of water they need in order to float would in turn have required that their cargo be unloaded far from the fort and "carr[ied] across the muddy, silty sediments surrounding the Island" (T 2932, 2934-35, 3033-34).

Thus, there is no doubt that supplies for Ellis Island were brought to the pier. The only question is whether that pier was built on fill or on piles, and Dr. Squires demonstrated that it was almost certainly built on fill. Although not a licensed engineer, he was qualified as an expert in marine engineering (T 2831, 2834), and explained that the use of pilings would have been

grossly impractical. Pilings, he explained, are driven through soft sediment under water until they reach the hard substrate beneath (T 3022). In the early 1800's, pilings would have been used principally "where hard substrate was near the surface of the bottom" (T 3022). But at Ellis Island, where there were nine or ten feet of soft sediment above the hard substrate, "[i]t would not have been state-of-the-art to drive pilings to that depth in 1819," for "the ability to drive a piling" did not yet exist (T 2932, 3022). Indeed, the use of pilings before the mid-1800's was "highly uncommon," and "pile-supported piers constructed where there was soft sediment were not in...general use in New York Harbor prior to the late 1800's" (T 3026-27). Conversely, the very shallow water around the pier made landfill an easy technique: the water is no more than three feet deep, and consequently "[i]t would not have been a feat of any difficulty to create that pier with solid fill" (T 2932, 3023).

This was, the Special Master recognized, informed speculation (T 2933), persuasive through the force of Dr. Squires' reasoning and his expertise in marine engineering. A pier sufficiently sturdy for its intended use could have been built either with great difficulty by means of a technique that was "highly uncommon" at the time of its construction or by means of a simple, obvious and widely recognized method. The former, Dr. Squires noted, was possible only in the sense that "[a]nything is possible" (T 3023).

Against Dr. Squires' expertise and logic, New Jersey offers nothing. Its entire evidence on the subject consists of this: Asked "whether the pier [in the 1819 map] was constructed by artificial filling," New Jersey's expert opined that "[t]here is no conclusive evidence of that" because "[y]ou can't tell by looking at the pier [on the map] what is underneath it" (T 277). In other words, because the 1819 map did not include a label saying "artificial

landfill," New Jersey declined to inquire any further. Under these circumstances, a rejection of Dr. Squires' testimony would have been unsound. The record contains no credible evidence to support any conclusion but that the pier on Ellis Island in 1834 was built on landfill.

POINT III

ALTHOUGH THE SPECIAL MASTER'S DIVISION OF SOVEREIGNTY OVER ELLIS ISLAND WAS ERRONEOUS, HIS EQUITABLE APPROACH TO DIVIDING SOVEREIGN TERRITORY WAS VALID

As demonstrated in New York's Brief on Exceptions, the Special Master erred profoundly in awarding sovereignty over any of Ellis Island to New Jersey. The 1834 Compact, the principles of prescription and acquiescence, and the doctrine of laches all indicate that the entirety of the Island belongs to New York. The Brief *amici curiae* of the National Trust for Historic Preservation in the United States and the Municipal Art Society of New York, moreover, demonstrates at length that splitting sovereignty over Ellis Island is a bad and impractical idea. It will require continuing supervision by this Court over the boundaries established by the Special Master, will create a "checkerboard" jurisdiction that will leave officials uncertain of which state's jurisdiction applies, will invite conflicts between the different preservation programs of New York and New Jersey, and will require application of inconsistent landmark laws on the Island, thus potentially hindering preservation and rehabilitation. As *amici* conclude (Br, pp 22-27), if equity applies to this case, it applies to keep Ellis Island subject to a single sovereign.

If, however, the Court nonetheless concludes that the Special Master correctly awarded the landfilled portions of Ellis Island

to New Jersey, it should follow his division of the territory on the Island. As the Special Master noted, a "template approach" of superimposing the supposed contours of the 1834 Island on the present-day Island "introduces impracticalities and inconveniences" (R 162). Rather than dividing three important buildings on the Island between the states, the Special Master sensibly awarded one building to New York and the other two to New Jersey, thus avoiding conflicts even more acute than the ones already bound to occur. By avoiding an outcome that leaves New York "with relatively thin strips of New Jersey's sovereign territory between New York and the ferry slip" (R 163), the Special Master at least assures that New York will not be "enclaved by New Jersey on the Island" and that New York City's operation of "Circle Line boats delivering millions of visitors annually to this location" will not be "disrupt[ed]" (R 163). Although both the 1834 Compact and subsequent events have produced an Ellis Island that has been and should remain subject to New York's exclusive sovereignty, an Island divided according to its "original" and filled portions should be divided as the Special Master proposes.

CONCLUSION

FOR THE FOREGOING REASONS, THE COURT SHOULD REJECT THE REPORT OF THE SPECIAL MASTER RECOMMENDING THAT THE STATE OF NEW JERSEY BE DECLARED SOVEREIGN OVER THE LANDFILLED PORTIONS OF ELLIS ISLAND, AND ISSUE A DECREE DECLARING THAT THE ENTIRETY OF ELLIS ISLAND IS IN THE TERRITORY AND SUBJECT TO THE SOVEREIGNTY OF THE STATE OF NEW YORK.

Dated: Albany, New York
August 29, 1997

Respectfully submitted,

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